

AMENDED IN SENATE MARCH 22, 2006

SENATE BILL

No. 1307

Introduced by Senator Poochigian

February 16, 2006

An act to amend Section 56.13 of the Civil Code, to amend Section 123105 of the Health and Safety Code, and to amend ~~Section~~ *Sections 4683 and 4690* of the Probate Code, relating to medical information.

LEGISLATIVE COUNSEL'S DIGEST

SB 1307, as amended, Poochigian. Medical information: confidentiality.

(1) Existing law prohibits the unauthorized disclosure of medical information, except as specified.

This bill would, if consistent with a power of attorney for health care, permit a patient's representative under a power of attorney for health care to further disclose the medical information.

(2) Existing law requires, if a patient's representative requests medical information regarding the patient, a physician or other health care provider to disclose the information to the representative.

This bill would include an agent under a power of attorney for health care, *to the extent necessary for the agent to fulfill his or her duties, as specified*, within the definition of patient's representative.

(3) *Existing law permits an agent under a power of attorney for health care to make certain decisions effective after the death of the principal who executed the power of attorney.*

This bill would additionally permit an agent, if necessary to fulfill the duties of that agent under a power of attorney for health care and after the death of the principal, to release the records of that principal.

(4) Under existing law, an agent under a power of attorney for health care may consult with and obtain information from a person to carry out the agent's duties, as specified. Existing law requires the person to comply with the agent's request.

This bill would permit the agent to consult with and obtain information from other agents acting under a power of attorney regarding the same patient. This bill would permit a covered entity under the federal Health Insurance Portability and Accountability Act to refuse to comply with the agent's request, under certain circumstances.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 56.13 of the Civil Code is amended to
2 read:

3 56.13. (a) A recipient of medical information pursuant to an
4 authorization as provided by this chapter or pursuant to the
5 provisions of subdivision (c) of Section 56.10 may not further
6 disclose that medical information except in accordance with a
7 new authorization that meets the requirements of Section 56.11,
8 or as specifically required or permitted by other provisions of this
9 chapter or by law.

10 (b) A patient's representative under Section 123105 of the
11 Health and Safety Code may further disclose medical
12 information if:

13 (1) The representative is an agent as defined in Section 4607
14 of the Probate Code.

15 (2) The disclosure is consistent with the authority of the agent
16 under Division 4.7 (commencing with Section 4600) of the
17 Probate Code.

18 SEC. 2. Section 123105 of the Health and Safety Code is
19 amended to read:

20 123105. As used in this chapter:

21 (a) "Health care provider" means any of the following:

22 (1) A health facility licensed pursuant to Chapter 2
23 (commencing with Section 1250) of Division 2.

24 (2) A clinic licensed pursuant to Chapter 1 (commencing with
25 Section 1200) of Division 2.

1 (3) A home health agency licensed pursuant to Chapter 8
2 (commencing with Section 1725) of Division 2.

3 (4) A physician and surgeon licensed pursuant to Chapter 5
4 (commencing with Section 2000) of Division 2 of the Business
5 and Professions Code or pursuant to the Osteopathic Act.

6 (5) A podiatrist licensed pursuant to Article 22 (commencing
7 with Section 2460) of Chapter 5 of Division 2 of the Business
8 and Professions Code.

9 (6) A dentist licensed pursuant to Chapter 4 (commencing
10 with Section 1600) of Division 2 of the Business and Professions
11 Code.

12 (7) A psychologist licensed pursuant to Chapter 6.6
13 (commencing with Section 2900) of Division 2 of the Business
14 and Professions Code.

15 (8) An optometrist licensed pursuant to Chapter 7
16 (commencing with Section 3000) of Division 2 of the Business
17 and Professions Code.

18 (9) A chiropractor licensed pursuant to the Chiropractic
19 Initiative Act.

20 (10) A marriage and family therapist licensed pursuant to
21 Chapter 13 (commencing with Section 4980) of Division 2 of the
22 Business and Professions Code.

23 (11) A clinical social worker licensed pursuant to Chapter 14
24 (commencing with Section 4990) of Division 2 of the Business
25 and Professions Code.

26 (12) A physical therapist licensed pursuant to Chapter 5.7
27 (commencing with Section 2600) of Division 2 of the Business
28 and Professions Code.

29 (b) “Mental health records” means patient records, or discrete
30 portions thereof, specifically relating to evaluation or treatment
31 of a mental disorder. “Mental health records” includes, but is not
32 limited to, all alcohol and drug abuse records.

33 (c) “Patient” means a patient or former patient of a health care
34 provider.

35 (d) “Patient records” means records in any form or medium
36 maintained by, or in the custody or control of, a health care
37 provider relating to the health history, diagnosis, or condition of
38 a patient, or relating to treatment provided or proposed to be
39 provided to the patient. “Patient records” includes only records
40 pertaining to the patient requesting the records or whose

1 representative requests the records. “Patient records” does not
2 include information given in confidence to a health care provider
3 by a person other than another health care provider or the patient,
4 and that material may be removed from any records prior to
5 inspection or copying under Section 123110 or 123115. “Patient
6 records” does not include information contained in aggregate
7 form, such as indices, registers, or logs.

8 ~~(e) “Patient’s representative” or “representative” means a~~
9 ~~parent or the guardian of a minor who is a patient, or the~~
10 ~~guardian or conservator of the person of an adult patient, or an~~
11 ~~agent as defined in Section 4607 of the Probate Code, or the~~
12 ~~beneficiary or personal representative of a deceased patient.~~

13 *(e) “Patient’s representative” or “representative” means any*
14 *of the following:*

15 *(1) A parent or guardian of a minor who is a patient.*

16 *(2) The guardian or conservator of the person of an adult*
17 *patient.*

18 *(3) An agent as defined in Section 4607 of the Probate Code,*
19 *to the extent necessary for the agent to fulfill his or her duties as*
20 *set forth in Division 4.7 (commencing with Section 4600) of the*
21 *Probate Code.*

22 *(4) The beneficiary as defined in Section 24 of the Probate*
23 *Code or personal representative as defined in Section 58 of the*
24 *Probate Code, of a deceased patient.*

25 (f) “Alcohol and drug abuse records” means patient records, or
26 discrete portions thereof, specifically relating to evaluation and
27 treatment of alcoholism or drug abuse.

28 SEC. 3. Section 4683 of the Probate Code is amended to
29 read:

30 4683. Subject to any limitations in the power of attorney for
31 health care:

32 (a) An agent designated in the power of attorney may make
33 health care decisions for the principal to the same extent the
34 principal could make health care decisions if the principal had
35 the capacity to do so.

36 (b) The agent may also make decisions that may be effective
37 after the principal’s death, including the following:

38 (1) Making a disposition under the Uniform Anatomical Gift
39 Act (Chapter 3.5 (commencing with Section 7150) of Part 1 of
40 Division 7 of the Health and Safety Code).

1 (2) Authorizing an autopsy under Section 7113 of the Health
2 and Safety Code.

3 (3) Directing the disposition of remains under Section 7100 of
4 the Health and Safety Code.

5 (4) *Authorizing the release of the records of the principal to*
6 *the extent necessary for the agent to fulfill his or her duties as set*
7 *forth in this division.*

8 ~~SEC. 3.~~

9 SEC. 4. Section 4690 of the Probate Code is amended to read:

10 4690. (a) If the principal becomes wholly or partially
11 incapacitated, or if there is a question concerning the capacity of
12 the principal, the agent may consult with a person previously
13 designated by the principal for this purpose, and may also consult
14 with and obtain information needed to carry out the agent's
15 duties from the principal's spouse, physician, attorney, agent
16 under a power of attorney subject to Division 4.5 or 4.7 of the
17 Probate Code, a member of the principal's family, or other
18 person, including a business entity or government agency, with
19 respect to matters covered by the power of attorney for health
20 care.

21 (b) Except as set forth in subdivision (c), a person from whom
22 information is requested shall disclose relevant information to the
23 agent. Disclosure under this section is not a waiver of any
24 privilege that may apply to the information disclosed.

25 (c) If a person is a "covered entity" pursuant to Section
26 160.103 of Title 45 of the Code of Federal Regulations, the
27 covered entity may elect not to treat the agent as the principal's
28 authorized representative provided that:

29 (1) The covered entity has a reasonable belief that the
30 principal has been or may be subjected to domestic violence,
31 abuse, or neglect by the agent, or treating the agent as the
32 principal's authorized representative could endanger the
33 principal.

34 (2) The covered entity, in the exercise of professional
35 judgment, decides that it is not in the best interest of the principal
36 to treat the agent as the principal's authorized representative.